IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1258

STATE OF MINNESOTA, BY WARREN SPANNAUS, ITS ATTORNEY GENERAL,
Petitioner,

vs.

FIRST OF OMAHA SERVICE CORPORATION and THE MARQUETTE NATIONAL BANK OF MINNEAPOLIS,
Respondents.

PETITION OF THE STATE OF MINNESOTA FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

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PETITION OF THE STATE OF MINNESOTA FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

The State of Minnesota prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Minnesota which was entered in the above-entitled case on December 14, 1977, invalidating on federal supremacy grounds Minnesota's interest limits on bank credit card accounts as applied to national banks from other states which solicit business in Minnesota.

OPINION BELOW

The unreported decision of the state district court (App-24)[1] the opinion of the Minnesota Supreme Court, —— Minn. —— (App. 1), and the order denying rehearing in the Minnesota Supreme Court, —— Minn. —— (App. 18), are appended to this petition.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3) to review the judgment of the Minnesota Supreme Court entered on December 14, 1977 (App. 19). Judgment was entered pursuant to the Court's Order of December 8, 1977, denying the petition for rehearing of the Marquette National Bank of Minneapolis.

QUESTION PRESENTED FOR REVIEW

Does 12 U.S.C. §85 of the National Bank Act preempt the 12% annual interest limit on open-end credit accounts imposed by Minn. Stat. §48.185 (1976), and thereby permit respondent First of Omaha Service Corporation and its parent company, the First National Bank of Omaha, to charge customers which it has solicited in Minnesota the 18% annual interest rate allowed by Nebraska law?

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1 "App" refers to the Appendix at the back of this petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provision involved is the supremacy clause, Article VI, Clause 2, of the United States Constitution, which states in pertinent part:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

The pertinent statutory provisions are:

12 U.S.C. § 85 (App. 40); and
Minn. Stat. §48.185 (1976) (App. 41).

STATEMENT OF THE CASE

The State of Minnesota, by its Attorney General, and the Marquette National Bank of Minneapolis (hereinafter "Marquette") are the petitioners in this action. Marquette is a national bank located in Minnesota which operates a BankAmericard bank credit card program. Respondent First of Omaha Service Corporation (hereinafter "Service Corporation") is a wholly-owned subsidiary of the First National Bank of Omaha (hereinafter "Omaha Bank"), a national bank located in Nebraska. The Omaha Bank also operates a BankAmericard bank credit card program, and its Service Corporation solicited Minnesota residents for the program until enjoined by the district court below.

Petitioner Marquette commenced this action in May, 1976, to enjoin the Service Corporation and the Omaha Bank from further solicitation of Minnesota residents and from charging Minnesota residents already enrolled in the Omaha Bank's bank credit card program interest at the Nebraska rate of 18% per annum in violation of the Minnesota maximum interest rate of 12% per annum. Minn. Stat. §48.185 (1976) limits the Omaha Bank's and the Marquette's BankAmericard programs within Minnesota to a maximum charge of 12% per annum on unpaid account balances. The Service Corporation maintained that Minn. Stat. §48.185 (1976) is preempted by 12 U.S.C. §85 which authorizes an out-of-state national bank operating a bank credit card program in Minnesota to charge either the Minnesota rate permitted under section 48.185 or the applicable interest rate of its home state, whichever is higher. The State of Minnesota became an intervenor in this proceeding since a state law (section 48.185) was under constitutional attack by the Service Corporation.

On December 22, 1976, the state district court rejected the preemption claim and temporarily enjoined the Service Corporation from violating section 48.185. A permanent injunction was entered on February 18, 1977. The Service Corporation then appealed to the Minnesota Supreme Court. On November 10, 1977, the Minnesota Supreme Court with three justices dissenting reluctantly reversed the district court, holding that the Omaha Bank should be allowed to assess its Minnesota customers the higher of the Minnesota or Nebraska rates. This ruling leaves an out-of-state national bank free to charge a higher interest rate to Minnesota customers than that allowed a state or national bank located in Minnesota. In its decision, the Minnesota Supreme Court acknowledged that this advantage "appears to be contrary to the original purpose in adopting this particular section [section 85] of the National Bank Act." *Marquette National Bank v. First of Omaha Service Corporation*, —— Minn. ——. (App. 1). However, the Court felt constrained to reach the decision it did by the decision of the 8th Circuit Court of Appeals in *Fisher v. First National Bank of Omaha*, 548 F.2d 255 (8th Cir. 1977).

REASONS FOR GRANTING THE WRIT

1. The Eighth Circuit Decision Upon Which The Minnesota Supreme Court Relied Is Surely Erroneous Since It Ignored The Legislative History Of Section 85 And Reached A Conclusion Contrary To Congress' Probable Intent.

Fisher v. First National Bank of Omaha, 548 F.2d 255 (8th Cir. 1977), held that a national bank has authority under section 85 to charge interest rates permitted by the laws of the state in which it is located when making loans in other states. 12 U.S.C. §85 provides in pertinent part:

> Any [national banking] association may . . . charge on any loan or discount made . . . interest at the rate allowed by the laws of the State . . . where the bank is located . . . and no more, except that where by the laws of any State a different rate is limited for banks organized under state laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter.

The Eighth Circuit offered no explanation of its holding that section 85 allows a national bank to export the interest rates of its home state. It simply concurred in the Seventh Circuit's ruling in *Fisher v. First National Bank of Chicago*, 538 F.2d

1284 (7th Cir. 1976), cert. denied 429 U.S. 1062 (1977), without comment. *Id.*, 548 F.2d at 258.[2]

The Seventh Circuit had based its decision on the "plain meaning" of section 85:

> We are not inclined to so twist the plain meaning of the statute. It clearly states that the interest on "any loan" is governed by the rate allowed by the state "where the bank is located."

Fisher v. First National Bank of Chicago, 538 F.2d 1284, 1290-1291 (7th Cir. 1976).[3] Reliance on the "plain meaning" of a federal statute to the exclusion of legislative history has been sharply criticized by this Court. *Train v. Colorado Pub. Int.*

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[2] This cursory treatment might be explained by the presence of an alternative ground for the decision. The district court had ruled, on choice of law grounds, that Nebraska interest rates controlled, and the Eighth Circuit affirmed that ruling. Fisher v. First National Bank of Omaha, 548 F.2d 255, 256-257 (8th Cir. 1977).

[3] The Seventh Circuit offered the following observation as a supplement to its plain meaning construction:

> After Tiffany [v. National Bank of Missouri, 85 U.S. 409 (1873)] was decided the exception was amended by Congress to apply it not only to associations "organized in any such State," which would be redundant inasmuch as the first clause applies to the same state, that is, where the bank is located, but to apply the exception also to associations "organized or existing in any such State." In this case the defendant bank appears to "exist" in Iowa, although in our view of the case we need not determine whether it does or not.

Fisher v. First National Bank of Chicago, 538 F.2d 1284, 1291 (7th Cir. 1976) (footnote omitted). The Seventh Circuit interpreted the words "or existing" as supporting its conclusion that an out-of-state national bank could export its home state interest rates. An argument of equal force can be made that the plain meaning of the "or existing" phrase is that the national bank transacting business in another state is governed by the interest rates of the place of transaction. The difficulty of "plain meaning" construction of this antiquated language is evident in the "redundancy" found by the court. In fact, there is no redundancy because the first clause guarantees a national bank equality under the general interest rate of a state and the exception guarantees equality with any special interest rate allowed state chartered banks. These two clauses state the "most favored lender" status of national banks which was affirmed in Tiffany.

Research Group, 426 U.S. 1 (1976), reversed the Tenth Circuit's interpretation of the phrase "radioactive materials" under the Federal Water Pollution Control Act Amendments of 1972. The Court observed:

> To the extent that the Court of Appeals excluded reference to the legislative history of the FWPCA in discerning its meaning, the court was in error. As we have noted before: "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'"

Train v. Colorado Pub. Int. Research Group, supra, 426 U.S. at 9-10 (citations omitted). Had not the Seventh Circuit taken a superficial plain meaning approach to construing section 85, it would have discovered that its conclusion is inconsistent with Congress' probable intention.

The precise matter at issue in this case—a loan made by a national bank outside its home state—was not specifically addressed in the Congressional debates of 1864 which led to the adoption of section 85. Such debate is not to be found because ". . . at the time the 1864 Act was passed, the activities of a national bank were restricted to one particular location." *Citizens & Southern National Bank v. Bougas*, —— U.S. ——, 98 S.Ct. 88, 93 (1977). However, the issues that were specifically debated demonstrate that Congress would have intended loans made by a national bank outside its home state to be governed by the interest rates of the state in which the loan was made.

The remarks of various senators on both sides of the principal debate in the Senate concerning section 85 indicate that

none of them would have favored a national bank's exportation of its home state's interest rates to another state. To the contrary, the clear implication of their remarks is that section 85 should incorporate the law of the state in which the loan is made. For example, Senator Sherman from Ohio,[4] a principal supporter of the development of a strong national banking system, commented:

> My own preference, however, as I have already stated, is to establish a uniform rate of interest by our law; but having been overruled on that point, *I prefer now to place the national banks in each State on precisely the same footing with individuals and persons doing business in the State by its laws.*

Cong. Globe, 38th Cong., 1st Sess. 2123, 2126 (1864) (emphasis added). The implication of these remarks in the present context is that national banks doing business in a state, whether it is their home state or not, should be permitted to charge the interest rates individuals and other persons doing business in that state are permitted to charge. Senator Trumbull from Illinois, who favored allowing national banks the highest interest rate permitted in a state, stated:

> *This provision* [*section 85*] *of the bill is not an interference with the States, but on the other hand an agreement with the States. It allows the same rate of interest in a state which is allowed by the laws of the State.*
>
> I think, if any good is to arise from these banking institutions [national banks], the law should be so formed that they may be established in all parts of the country; *and it is no interference with State authorities, or with the authority of the different states to control this rate of interest.* The State of Kansas may do it or the State of Iowa, or the State of Illinois, or any state, *and there can be no complaint by the people of these States if it is left to the control of their legislatures. . . .*

[4] The legislative skirmish over the National Bank Act of 1864 and the prominent role played by Senator Sherman are explained in First National Bank in Mena v. Nowlin, 509 F.2d 872, 880-881 (8th Cir., 1975) (See particularly footnote 18 therein).

Cong. Globe, *supra*, at 2124 (emphasis added). Senator Trumbull's remarks stress the rights of the individual states to establish non-discriminatory interest rates free from federal interference. Senator Trumbull's remarks suggest that national banks are to be treated evenhandedly under the laws of the states in which they do business. If the interpretation of section 85 adopted below were to stand, a national bank from outside a state could import a different rate of interest from that which is allowed by the laws of that state.[5] Such an exemption for an out-of-state national bank would clearly constitute federal interference with the laws of that state. It would also give rise to a distinction between local and out-of-state national banks that is contrary to the Congressional objective of competitive equality. No Congressional policy can be conceived which justifies this distinction. As Justice Scott of the Minnesota Supreme Court noted in his dissent below:

> The shield of the Act has thus been turned into a sword which can now be used by national banks located outside Minnesota against local national banks. National banks located outside Minnesota would not only have more

[5] Opposing Sherman and Trumbull were a group of Senators who favored strict parity between national banks and state banks. This group would naturally have opposed the concept that a national bank could charge the interest rate allowed in its home state when doing business in another state with lower interest limits for its state banks. See, for example, comments of Senator Henderson of Missouri and Senator Dolittle of Wisconsin. Cong. Globe, 38th Cong., 1st Sess. 2126 (1864).

favored lender status in Minnesota, but rights greater than the most favored lender. Surely this result is not within the contemplation of the National Bank Act.

Marquette National Bank v. First of Omaha Service Corporation, —— Minn. —— (Scott, J. dissenting) (App. 1).

In relying on its "plain meaning" construction, the Seventh Circuit rejected without analysis the one case which had examined the legislative intent behind section 85, *Meadow Brook National Bank v. Recile*, 302 F. Supp. 62 (E.D. La. 1969). That decision held that a national bank is governed by the usury laws of the state in which the transaction takes place. It set forth this thoughtful discussion of the scope and purpose of section 85:

> We do not think Congress intended this provision to serve as a haven for national banks which, located in states with little or no restrictions as to the interest rate, charge interest on loans made in other states in excess of that allowed by the laws of those states. This, too, would frustrate the congressional purpose of the equality between national and state banks regarding the interest rate.
>
> It might be suggested that had Congress intended this result, it could have readily been more explicit. The statute, however, was passed in 1864, over one hundred years ago, and we cannot believe that Congress foresaw, at that time, the financial fluidity which exists today. At that time, it was undoubtedly most unusual for a national bank to make a loan in a state other than the state where it was located. Even today, while it is not unusual, banks are hesitant to do so.

Meadow Brook, supra, 302 F. Supp. at 74.

Thus, neither the Minnesota Supreme Court, the Eighth Circuit or the Seventh Circuit have explored the legislative history of section 85. An examination of legislative history is essential to an understanding of the federal policy governing national banks and the relationship between that policy and the remaining areas of state regulation. This case involves an important question of the division of power between the federal government and the states which has not been addressed by this Court or adequately examined by any appellate court. Therefore, review by this Court is appropriate under Supreme Court Rule 19(1)(a).

2. The State of Minnesota Has A Deeply Rooted Interest In Protecting Its Citizens From Usury. The State Should Not Be Barred From This Traditional Function Unless Federal Policy Unmistakably So Requires.

The State of Minnesota has consistently and vigorously sought to protect its citizens from oppressive rates of interest. The earliest Minnesota statutes on usury were adopted from earlier New York and English statutes. *Jordan v. Humphrey*, 31 Minn. 495, 497 (1884).[6] Recent sessions of the Minnesota legislature have enacted legislation dealing with consumer, agricultural, and business credit.[7] Likewise, the Minnesota Supreme Court articulated the strong state concern with credit

[6] The English and American colonial laws regulating interest rates had origins in the religious doctrine of medieval England. See 91 C.J.S. Usury § 2 (1955).

[7] In addition to section 48.185 at issue here, see Minn. Stat. §§ 334.01 (general usury statute amended in 1974), 334.011 (agricultural loan statute adopted in 1976), and 334.16-334.181 (consumer credit statute adopted in 1971).

regulation in expressing the extreme reluctance with which it reached its conclusion in the instant case:

> A national bank engaged in the interstate business of credit card financing should not be able to avoid the provisions of Minnesota law relating to allowable interest rates. The granting of a pecuniary advantage to the national banks seems inconsistent with the original purposes of the banking act and contrary to the expressed local interest of the state in protecting its citizens from excessive financing charges.

Marquette National Bank, supra, —— Minn. —— (App. 1).

This Court has made clear that the states remain free to regulate national banks except insofar as such regulation might frustrate federal policy. In upholding a state prohibition on branch banking, the Court observed:

> National banks are brought into existence under Federal legislation, are instrumentalities of the Federal government and are necessarily subject to the paramount authority of the United States. Nevertheless, national banks are subject to the laws of the state in respect to their affairs unless such laws interfere with the purposes of their creation, tend to impair or destroy their efficiency as Federal agencies, or conflict with the paramount law of the United States.

First National Bank in St. Louis v. State of Missouri, 263 U.S. 640, 656 (1923). Recent decisions of the Court have emphasized that preemption claims require careful analysis of state and federal policies, *Jones v. Rath Packing Co.,* 430 U.S. 519 (1977), and that the two schemes of regulation should be reconciled whenever possible. *DeCanas v. Bica,* 424 U.S. 351 (1976); *Merrill, Lynch, Pierce, Fenner & Smith v. Ware,* 414 U.S. 117 (1973).[8]

Minnesota's regulation of bank credit card interest in section 48.185 does not conflict in any manner with the federal policy of equal competitive footing for national banks. It is an appropriate state function within the system of dual regulation established by Congress and practiced for over a century. Review of the decision below should be granted to vindicate this important state concern.

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[8] In Merrill, Lynch, Pierce, Fenner & Smith v. Ware, 414 U.S. 117, 127 (1973), the Court stated:

> [C]onflicting law absent repealing or exclusivity provisions, should be pre-empted . . . only to the extent necessary to protect the achievement of the aims of the federal law, since the proper approach is to reconcile the operation of both statutory schemes with one another rather than holding [the state scheme] completely ousted.

CONCLUSION

The Minnesota Supreme Court erred in construing section 85 of the National Bank Act as a bar to non-discriminatory state regulation of bank credit card interest rates charged to its citizens. Congress could not have envisioned the modern credit card system at the time of the enactment of section 85. The most reasonable inference as to Congressional intent suggests that Congress would have desired out-of-state national banks to be governed by the most favorable interest provisions allowed local national and state banks. Minn. Stat. §48.185 (1976) is an exercise of traditional state police power, consistent with the intent ascribed to Congress. In light of the important state interest in protecting the public against usurious rates and the incongruous distinction between Minnesota and out-of-state national banks resulting from the ruling below, this Court should grant certiorari and give plenary consideration to the issues raised herein.

Dated: March 10, 1978.

Respectfully submitted,

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APPENDIX

No. 250 Hennepin County
Todd, J.
Concurring specially,
Sheran, C. J.
Dissenting, Scott, J.,
Yetka, J., Wahl, J.

THE MARQUETTE NATIONAL BANK
OF MINNEAPOLIS,
Respondent,
47561 vs.
FIRST OF OMAHA SERVICE CORPORATION,
Appellant,
and
STATE OF MINNESOTA, intervenor,
Respondent.

Endorsed
Filed November 10, 1977
John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

A national bank may charge its nonresident credit card customers an interest rate on unpaid accounts allowable in the state where it is located, or the interest rate of the state where it is doing business, whichever is higher.

Reversed.

Considered and decided by the court en banc.

OPINION

TODD, Justice.

The Marquette National Bank of Minneapolis (Marquette) sought to enjoin the First National Bank of Omaha (Omaha Bank) and its wholly-owned subsidiary, First of Omaha Service Corporation (Omaha Service) from issuing BankAmericard credit cards to the State of Minnesota. The Omaha Bank program assessed customers an annual interest rate of 18 percent on unpaid balances of less than $1,000, to be computed upon the prior month's balance of the individual account. The Minnesota Credit Card Act (Minn. St. 48.185) [1] sets a maximum interest rate of 12 percent per annum with the interest charge to be based on an amount no greater than the average balance of the individual account for the prior month. As a result of procedural actions, Omaha Service remains as the only defendant, but the matter was considered as though the Omaha Bank still remained as a defendant. The district court entered judgment permanently enjoining Omaha Service from soliciting BankAmericard customers on behalf of the Omaha

[1] Minn. St. 48.185 provides in pertinent part: "Subd. 3. A bank or savings bank may collect a periodic rate of finance charge in connection with extensions of credit pursuant to this section, which rate does not exceed one percent per month computed on an amount no greater than the average daily balance of the account during each monthly billing cycle. If the billing cycle is other than monthly, the maximum finance charge for that billing cycle shall be that percentage which bears the same relation to one percent as the number of days in the billing cycle bears to 30.

"Subd. 4. No charges other than those provided for in subdivision 3 shall be made directly or indirectly for any credit extended under the authority of this section, except that there may be charged to the debtor:

"(a) Annual charges, not to exceed $15 per annum, payable in advance, for the privilege of using a bank credit card which entitled the debtor to purchase goods or services from merchants, under an arrangement pursuant to which the debts resulting from the purchases are paid or satisfied by the bank or savings bank and charged to the debtor's open end loan account with the bank or savings bank."

Bank in Minnesota in contravention of the provisions of Minn. St. 48.185. We reverse.

Prior to the hearing on the matter, the parties agreed to a stipulation of facts which provides:

"I.

"The BankAmericard plan is a national and international bank credit card system which enables cardholders to purchase goods and services from participating merchants and obtain cash advances from participating banks throughout the United States and the world. The First National Bank of Omaha, which is not a defendant herein, is a national bank with its charter address in Omaha, Nebraska, is a card issuing member in the BankAmericard plan, and as such has issued (prior to the restraining order) and intends to issue * * * BankAmericard credit cards to Minnesota residents who qualify for them.

"II.

"Defendant First of Omaha Service Corporation is a wholly-owned subsidiary of First National Bank of Omaha. Its principal place of business is in Omaha, Nebraska but it is authorized to transact business in the State of Minnesota and intends, unless restrained or enjoined, to transact business in the State of Minnesota in the manner set forth and described in Paragraph III of this Stipulation.

"III.

"Defendant First of Omaha Service Corporation will participate in the system by entering into agreements with Minnesota merchants and Minnesota banks which will govern the participation of those merchants and banks in the system. * * * While participating Minnesota banks will not have the authority to issue cards or

extend credit directly in connection with BankAmericard transactions, they will advertise the BankAmericard plan and solicit applications for BankAmericards from Minnesota residents which are then forwarded to First National Bank of Omaha for acceptance or rejection, and they will serve as a depository for BankAmericard sales drafts deposited by participating merchants with whom defendant First of Omaha Service Corporation has member agreements.

"IV.

"The First National Bank of Omaha has solicited and intends to solicit Minnesota residents on a continuous and systematic basis, in order to induce them to enroll in the First National Bank of Omaha's BankAmericard program. This solicitation program will be carried out by direct mail solicitation, telephone contact and through Minnesota banks. * * *

"V.

"Minnesota cardholders wishing to purchase goods and services or obtain cash advances with a BankAmericard issued by the First National Bank of Omaha, sign a BankAmericard form evidencing the transaction which is authenticated by the cardholder's BankAmericard credit card, and exchange the signed form for goods or services or cash from a participating Minnesota merchant or bank, respectively. The sales draft forms are then deposited by the participating Minnesota merchant to his account with a participating Minnesota bank for credit, which will then forward them and cash advance drafts drawn on such bank to the First National Bank of Omaha for credit.

"VI.

"The First National Bank of Omaha renders periodic statements to its Minnesota cardholders and charges finance charges on the unpaid balance of the cardholder's account. Such finance charges are assessed at the rate of 1-1/2% per month on the first $999.99 of the customers account for an annual percentage rate of 18%, and 1% a month on amounts of $1,000 and more for an annual percentage rate of 12%. * * * [T]he finance charges assessed by the First National Bank of Omaha are computed on the daily outstanding balance of cash advances and on the entire previous balance of purchases of goods or services before deducting any payments made during the billing cycle. No finance charges are imposed on the purchases portion of the account balance when the previous month's total balance is paid in full on or before the due date shown on the monthly statement. Minnesota cardholders may pay all of their account balance in full or defer payment by paying an installment thereof. Payments of account balances are remitted by Minnesota residents directly to the First National Bank of Omaha.

"VII.

"The defendant First of Omaha Service Corporation and participating Minnesota banks are or will be paid a fee for their services rendered to the First National Bank of Omaha. Defendant First of Omaha Service Corporation and the participating Minnesota banks do not directly receive interest. However, the First of Omaha Service Corporation does accept assignments of delinquent accounts from the First National Bank of Omaha, and as an incident to collecting these accounts, does collect interest.

"VIII.

"The defendant First of Omaha Service Corporation intends, unless further restrained or enjoined, to immediately commence solicitation of potential participating Minnesota banks and Minnesota merchants so that they may perform the functions described in Paragraph III and IV of this Stipulation in connection with the BankAmericard credit card program conducted by the First National Bank of Omaha. Interest rates will be assessed to Minnesota resident cardholders in the manner set forth in Paragraph VI of this Stipulation. Said interest rates are imposed by the First National Bank of Omaha in reliance on rates permitted in the State of Nebraska under Revised Statutes of Nebraska, 1943, and Cumulative Supplement, Secs. 8-815—8-823, 8-825—8-829, as added by Laws 1969, Chapter 31 (L.B. No. 52) as amended, and other laws of Nebraska, which the defendant First of Omaha Service Corporation contends are permitted to be charged to Minnesota residents by virtue of the provisions of the National Bank Act, Title 12 U.S.C. § 85.

"IX.

"The plaintiff The Marquette National Bank of Minneapolis ('Marquette') is asking for temporary and permanent injunction restraining the defendant First of Omaha Service Corporation, and all persons acting as officers, employees or agents thereof, from engaging in any solicitation of residents of the State of Minnesota or other activity in connection with the offering or operation of a bank credit card program in the State of Minnesota in violation of Minnesota Statutes, Section 48.185.

"X.

"Plaintiff Marquette is a national bank with its main banking office in Minneapolis, Minnesota, is a card-issuing member in the BankAmericard plan and as such has issued and continues to issue cards to Minnesota residents who qualify for them. * * *

"XI.

"Since the enactment on April 8, 1976, of Chapter 196, Laws of Minnesota 1976, codified as Minnesota Statutes, Section 48.185, the plaintiff Marquette has assessed charges in connection with its BankAmericard credit card program in reliance on such Statute as follows: a $10 annual charge for the privilege of using the card and, in addition a finance charge equal to 1% per month (12% annual percentage rate). * * * [T]he finance charge of 1% per month assessed by plaintiff Marquette is computed on the average daily balance of the cardholder's amount during each monthly billing cycle, except that where the account balance is attributable solely to purchases of goods and services charged to the account during one billing cycle, and the amount is paid in full before the due date of the first statement issued after the end of that billing cycle, no finance charge is charged on that balance."

The procedural history of this case is significant. Marquette originally commenced an action in Minnesota district court against the Omaha Bank, Omaha Service, and the Credit Bureau of St. Paul, Inc., alleging violations of the Minnesota Credit Card Act (Minn. St. 48.185), and the Minnesota Deceptive Trade Practices Act (Minn. St. 325.772); and seeking money damages and injunctive relief to restrain the defendant from solicitation in Minnesota for defendant's Bank-

Americard program. Since the Omaha Bank was a national bank, the case was removed to the United States District Court for Minnesota pursuant to 28 USCA, § 1441. Marquette thereafter dismissed Omaha Bank as a party defendant, resulting in the case being remanded back to the state district court because of a lack of Federal subject matter jurisdiction.[2] The case then proceeded solely against Omaha Service. However, because Omaha Service's function is limited to entering into agreements with merchants and local banks, and, since it does not have control over the issuance of credit cards or establishing the rate of finance charge, the case was treated as if the Omaha Bank was still the defendant.

The district court issued a permanent injunction against Omaha Service prohibiting the "solicitation of residents of the State of Minnesota or other activity in connection with * * * the operation of a bank credit card program" which violates Minn. St. 48.185. In issuing the permanent injunction, the court held that while Federal law prevents states from enacting laws which discriminate against classes of lendors, it does not preclude states from discriminating against classes of loans. The principal issue presented on appeal is whether a state may regulate, by statute, the credit card interest rate charged by a national bank located in another state but conducting business within the regulating state.

National banks are regulated by the United States Congress. The amount of interest which a national bank may charge its customers is governed by 12 USCA, § 85, which provides in part:

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[2] If Marquette had not dismissed the Omaha Bank as a party defendant, the case would have undoubtedly been transferred to the United States District Court for Nebraska since a national bank can only be sued in the forum where it is established. See, Radzanower v. Touche Ross & Co. 426 U. S. 148, 96 S. Ct. 1989, 48 L. ed. 2d 540 (1976).

"Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, *interest at the rate allowed by the laws of the State, Territory, or District where the bank is located*, * * *." (Italics supplied.)

The application of this section to interstate credit transactions has been recently considered by both the Seventh and Eighth Circuit Courts of Appeals. In Fisher v. First National Bank of Chicago, 538 F. 2d 1284 (7 Cir. 1976), certiorari denied, 429 U. S. 1062, 97 S. Ct. 786, 50 L. ed. 2d 778 (1977), the court addressed a situation in which a national banking association with its principal place of business in Illinois was charging Fisher, an Iowa resident, interest on the unpaid balance of his monthly BankAmericard statement at a rate allowable in Illinois. Fisher brought an action alleging that the Illinois bank was charging usurious interest to Iowa residents under its BankAmericard program. In permitting the Illinois bank to assess Illinois interest rates to Iowa resident users of the credit card, the court of appeals stated (538 F. 2d 1289):

"* * * The defendant here is located, established and organized in only Chicago, Illinois, and is subject therefore to the rate of interest 'allowed by the laws of the State' of Illinois. If we could stop there and only look at the first portion of § 85, we could easily conclude that the 18% per annum rate of interest allowed by the Illinois Revolving Credit Act, Ill. Rev. Stat., ch. 74, § 4.2 (1973), governs the rate chargeable by the defendant within Illinois and anywhere else that it might do business. The language is certainly broad enough to bear that interpretation. It refers to the interest on 'any loan or discount made' as being governed by the laws of the single state where the national bank can be located.

"* * * The crux of this case is what law governs when the Chicago-located national banking association does business in another state, here Iowa. * * *

* * * * *

"We would summarize the statute as it applies to this case as follows: Illinois' 18% per annum statute applies to *all* loans made by the defendant Illinois national banking association, whether made in Illinois or elsewhere, but if the defendant is 'existing' in Iowa and if Iowa allowed, which it apparently does not, a rate of interest to its own state banks in excess of 18%, the defendant could charge such higher rate to the defendant's customers in Iowa." [3]

After the action against the Illinois bank was in progress, the same plaintiff brought an almost identical action against the First National Bank of Omaha, challenging its right to charge Iowa resident customers of the Omaha BankAmericard program interest rates allowable in Nebraska. In Fisher

[3] But see, Meadow Brook National Bank v. Recile, 302 F. Supp. 62, 73 (E. D. La. 1969), in which the court reasoned: "In effect, 12 U.S.C. § 85 provides that a national bank may charge interest at the rate allowed by the laws of the state where the bank is located. The question is whether this was meant to fix the rate of interest on *all* loans made by the bank or merely those loans made in that state. Admittedly, the above quoted language would seem to include all loans made by the bank and not solely those made in the state where the bank is located. * * *

* * * * *

"We hold that 12 U.S.C. § 85 fixes the rate of interest chargeable by a national bank only as to loans made in the state where the bank is located; it does not fix the rate of interest which may be charged by a national bank which is located in one state and makes a loan in another state."

This reasoning was disapproved by the Seventh Circuit in Fisher v. First National Bank of Chicago, 538 F. 2d 1284, 1290 (7 Cir. 1976), certiorari denied, 429 U. S. 1062, 97 S. Ct. 786, 50 L. ed. 2d 778 (1977): "We are not inclined to so twist the plain meaning of the statute. It clearly states that the interest on 'any loan' is governed by the rate allowed by the state 'where the bank is located,' which in this case is Illinois."

v. First National Bank of Omaha, 548 F. 2d 255, 257 (8 Cir. 1977), the court of appeals, in denying the plaintiff's claim, stated:

"* * * The question is whether under the National Bank Act we are required to apply the law of Nebraska or the law of Iowa to transactions which were initiated in Iowa but consummated in Nebraska. * * *

"* * * We are persuaded, however, that it really makes no difference whether the transactions are characterized as being Nebraska transactions or whether they are characterized as Iowa transactions.

"In the very recent case of *Fisher v. First Nat'l Bank of Chicago*, 538 F. 2d 1284 (7 Cir. 1976), it was held that under the provisions of § 85, if a national bank in one state makes a loan in another state in which it is doing business, and if there is a differential between the maximum rate allowable in one state and the maximum rate allowable in the other state with respect to the same class of debt, the bank may charge the higher of the two rates.

"We find ourselves in agreement with that holding. And when it is applied to this case, it is clear that the bank is entitled to charge on these transactions the highest permissible Nebraska rate for the same class of loan regardless of whether the loan is made in Nebraska or Iowa since the maximum rate allowable in Iowa is no higher than the maximum rate allowable in Nebraska. If Iowa permitted a higher rate, which it does not, the bank would be entitled to charge the higher rate."

Thus, we have a situation where the Eighth Circuit Court of Appeals, which includes the State of Minnesota, has adopted with approval the view of the Seventh Circuit that a national bank can charge its credit customers an interest rate allow-

able in the state where it is physically located, or the interest rate of the state where it is doing business, whichever is higher. At this point, the procedural history of this case assumes a greater importance. It appears fairly obvious that if the Omaha Bank had remained as a party defendant, the Federal District Court for Minnesota or for Nebraska would have followed the opinion of the Eighth Circuit. By dismissing the Omaha Bank as a defendant, Marquette apparently intended to, and actually did, avoid a result that appeared to be predetermined if the case had remained in the Federal court system.

In reaching a decision to enjoin Omaha Service and, in practical effect, the Omaha Bank from operating their Bank-Americard program in Minnesota in violation of § 48.185, the district court sought to distinguish the two Fisher cases. In a well-reasoned memorandum accompanying its order, the district court discussed and interpreted the Fisher cases in light of the factual situation of the present case and determined those cases to be inapplicable as there did not exist a statute setting a credit card rate of interest in any of the states involved. The court concluded that while 12 USCA, § 85, precludes states from discriminating against lendors as a class, it does not prohibit a state from establishing classes of loans which are applied uniformly to all banks doing business in the state. If we were writing on a clean slate, this reasoning would appear to be more consistent with the history and purpose of the National Bank Act.

The particular section of the National Bank Act under consideration in this case has been in existence for over a century. Obviously, the ramifications and problems resulting from bank credit card financing could not have been considered by Congress at the time of its adoption. Furthermore, a rather

strong argument can be made that credit card financing is not purely banking business even though a bank may administer the program. The original version of the National Bank Act was enacted by Congress to protect national banks from discriminatory economic legislation by individual states in which the various national banks were located. The result of the Federal legislative efforts was to create what has commonly been referred to as a "most favored lendor status" for national banks. First National Bank in Mena v. Nowlin, 509 F. 2d 872, 879 (8 Cir. 1975); United Missouri Bank of Kansas v. Danforth, 394 F. Supp. 774, 779 (W. D. Mo. 1975). In the landmark case of Tiffany v. National Bank of Missouri, 85 U. S. (18 Wall.) 409, 21 L. ed. 862 (1874), the laws of Missouri limited the amount of interest chargeable by banks organized under state laws to 8 percent but allowed all other persons in the state to assess a 10-percent interest charge upon credit transactions. Within this statutory scheme a national banking association organized and located in the State of Missouri charged its credit customers a 9-percent interest rate which was alleged to be usurious. In an early interpretation of virtually identical statutory language to that employed in 12 USCA, § 85, the Supreme Court held that the National Bank of Missouri could lawfully charge its customers a 10-percent interest rate and reasoned (85 U. S. [18 Wall.] 412, 21 L. ed. 683):

> "* * * Coupled with the general spirit of the act, and of all the legislation respecting National banks, it is controlling. It cannot be doubted, in view of the purpose of Congress in providing for the organization of National banking associations, that it was intended to give them a firm footing in the different States where they might

be located. It was expected they would come into competition with State banks, and it was intended to give them at least equal advantages in such competition. In order to accomplish this they were empowered to reserve interest at the same rates, whatever those rates might be, which were allowed to similar State institutions. This was considered indispensable to protect them against possible unfriendly State legislation. Obviously, if State statutes should allow to their banks of issue a rate of interest greater than the ordinary rate allowed to natural persons, National banking associations could not compete with them, unless allowed the same. On the other hand, if such associations were restricted to the states allowed by the statutes of the State to banks which might be authorized by the State laws, unfriendly legislation might make their existence in the State impossible. A rate of interest might be prescribed so low that banking could not be carried on, except at a certain loss. The only mode of guarding against such contingencies was that which, we think, Congress adopted. It was to allow to National associations the rate allowed by the State to natural persons generally, and a higher rate, if State banks of issue were authorized to charge a higher rate. This construction accords with the purpose of Congress, and carries it out. It accords with the spirit of all the legislation of Congress. National banks have been National favorites. They were established for the purpose, in part, of providing a currency for the whole country, and in part to create a market for the loans of the General government. It could not have been intended, therefore, to expose them to the hazard of unfriendly legislation by the States, or to ruinous competition with State banks."

The decisions reached in the Fisher cases injected a new attribute into the "most favored lendor status," which resulted in allowing the interstate shipment of interest rates by national banks in their credit card programs. This result is accomplished despite the fact that the individual state has attempted to specifically limit the interest rates allowable on certain loan transactions and its laws apply uniformly to all lending institutions within the state. Thus, by allowing a national bank to transport a given interest rate under these circumstances could afford it a distinct advantage in competing with state banking institutions, an advantage which appears to be contrary to the original purpose in adopting this particular section of the National Bank Act.

However, we deem it inappropriate for this court to permit the use of procedural devices to obtain a result inconsistent with the existing doctrine in the Eighth Circuit. Consequently, we must reverse the district court's order which enjoins Omaha Service from operating the Omaha Bank's BankAmericard program by charging an interest rate in violation of § 48.185. Consistent with the reasoning in the Fisher cases, the Omaha Bank may assess an interest rate to its BankAmericard customers in Minnesota which complies with the applicable Nebraska statutory interest rate. See, Neb. Rev. Stat. § 8-820.

Finally, we observe that under the present situation it is the responsibility of the United States Congress to resolve the obvious inequities created. A national bank engaged in the interstate business of credit card financing should not be able to avoid the provisions of Minnesota law relating to allowable interest rates. The granting of a pecuniary advantage to the national banks seems inconsistent with the original purposes of the banking act and contrary to the expressed local interest

of the state in protecting its citizens from excessive financing charges.

Reversed.

SHERAN, Chief Justice (concurring specially).

I agree with the result. I do not agree that the public suffers by application of the law in this case where users of credit cards now have a choice between competing suppliers.

SCOTT, Justice (dissenting).

I respectfully dissent. The original purpose of 12 USCA, § 85, of the National Bank Act was to prohibit states from discriminating against national banks in favor of local financial institutions. It was intended to put "national banks on an equal footing with the most favored leaders in the state without giving them an unconscionable and destructive advantage over all state lenders." First National Bank in Mena v. Nowlin, 509 F. 2d 872, 880 (8 Cir. 1975). Section 85 thus was intended to insure *intrastate* competitive equality among state lenders and national banks.

The Fisher decisions and the majority of this court interpret § 85 to apply in situations involving *interstate* transactions. These decisions and the majority would allow a credit card subsidiary of a Nebraska national bank to have rights greater than those enjoyed by national banks located in Minnesota. The shield of the Act has thus been turned into a sword which can now be used by national banks located outside Minnesota against local national banks. National banks located outside Minnesota would not only have most favored lender status in Minnesota, but rights greater than the most favored lender. Surely this result is not within the contemplation of the National Bank Act.

As the majority opinion states, "The decisions reached in the Fisher cases injected a new attribute into the 'most fa-

vored lender status,' which resulted in allowing the interstate shipment of interest rates by national banks in their credit card programs." Additionally, should a simple credit card transaction between a local citizen and a local merchant be construed as a bank loan by the Nebraska bank to a Minnesota citizen as Fisher proclaims without question? Minnesota should reject such an extension as a misinterpretation of the National Bank Act [1] and exercise its own judgment. In such matters we are not bound by the Federal circuit court cases but only by holdings of the United States Supreme Court.[2] E. g., United States ex rel. Lawrence v. Woods, 432 F. 2d 1072, 1076 (7 Cir. 1970).

I would therefore affirm the trial court's issuance of the permanent injunction against Omaha Service prohibiting the solicitation of credit card customers in Minnesota as a violation of Minn. St. 48.185.

YETKA, Justice (dissenting).

I join in the dissent of Mr. Justice Scott.

WAHL, Justice (dissenting).

I join in the dissent of Mr. Justice Scott.

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[1] The trial court, in its order of December 22, 1976, stated: "To take a statute that has been on the books for almost 100 years and find in that law an intention, in 1976, to nullify a financial practice of 200 years standing is ludicrous and makes a mockery of the doctrine of legislative intent. If there be any intent in Congress it must be to preserve the financial customs of so long a standing in our Republic."

[2] "While a decision of a federal court, other than the Supreme Court, may be persuasive in a state court on a federal matter, it is, nevertheless, not binding, since the state court owes obedience to only one federal court, namely the Supreme Court." 1B Moore, Federal Practice, Par. 0.402[1], p. 65 (2 ed.).

STATE OF MINNESOTA
IN SUPREME COURT

THE MARQUETTE NATIONAL
BANK OF MINNEAPOLIS,

Respondent,

vs.

FIRST OF OMAHA SERVICE CORPORATION,

Appellant,

and

STATE OF MINNESOTA, INTERVENOR,

Respondent.

47561

ORDER

Based upon all the files, records, and proceedings herein, IT IS HEREBY ORDERED that

1. The petition of respondent Marquette National Bank of Minneapolis for rehearing is denied.

2. The original opinion is amended by deleting therefrom the following language appearing on page 8 of the court's opinion, to-wit:

"By dismissing the Omaha Bank as a defendant, Marquette apparently intended to, and actually did, avoid a result that appeared to be predetermined if the case had remained in the Federal court system."

3. Respondent Marquette National Bank is herewith granted a stay of judgment pending application for writ of certiorari to the United States Supreme Court. The stay is conditioned upon the filing of a bond in the amount of $10,000 with this court, approved by one of the justices of this court. The stay is further conditioned that if Marquette National

Bank fails to make application for writ of certiorari with the United States Supreme Court within the time period allotted therefor or fails to obtain an order granting its application or fails to make its plea good in the United States Supreme Court, it shall answer for all damages and costs which the appellant First of Omaha Service Corporation may sustain by reason of the stay.

Dated: December 8, 1977.

By the Court

____

Associate Justice

STATE OF MINNESOTA
SUPREME COURT

THE MARQUETTE NATIONAL BANK
OF MINNEAPOLIS,

Respondent,

vs. 47561

FIRST OF OMAHA SERVICE CORPORATION,

Appellant,

and

STATE OF MINNESOTA, INTERVENOR,

Respondent.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order and judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Hennepin be and the same hereby is in all things reversed.

And it is further determined and adjudged that appellant herein, do have and recover of respondent The Marquette Na-

tional Bank of Minneapolis herein the sum and amount of Ninety-Four and no/100 Dollars, ($94.00) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed December 14, 1977.

By the Court:

Attest: John McCarthy

John McCarthy, Clerk

STATEMENT FOR JUDGMENT

Statutory Costs $25.00 Printer $44.00 Clerk $20.00
Acknowledgements: Return $5.00 Postage and
Express $ Appeal Bond $ Transcript $
Total $94.00

Satisfaction of Judgment filed

Therefore the above judgment is duly satisfied in full and discharged of record.

Attest: Clerk.

By Deputy.

Supreme Court
State of Minnesota—ss.

I, John McCarthy, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul, March 7, 1978. — John McCarthy, Clerk. By Wayne Tschimperle, Deputy.

STATE OF MINNESOTA — DISTRICT COURT
County of Hennepin — Fourth Judicial District

Civil File No. 726526

THE MARQUETTE NATIONAL BANK
OF MINNEAPOLIS,

Plaintiff,

vs.

FIRST OF OMAHA SERVICE CORPORATION,
and CREDIT BUREAU OF ST. PAUL, INC.,

Defendants.

TEMPORARY RESTRAINING ORDER

Upon the Application for Temporary Restraining Order and the verified Complaint of plaintiff, The Marquette National Bank of Minneapolis, the Affidavit of John Troyer, and all the files and proceedings herein,

IT IS HEREBY ORDERED that upon the filing of a Bond by the plaintiff, in the amount of $10,000.00 approved by this Court, defendant, First of Omaha Service Corporation, and all persons acting as officers, employees or agents thereof, shall refrain from engaging in any solicitation of residents of the State of Minnesota or other activity in connection with the offering or operation of a bank credit card program in the State of Minnesota in violation of Minnesota Statutes, Section 48.185 until the further order of this Court.

Let this Order be served upon the said defendant, First of Omaha Service Corporation, by serving a copy of same upon Clay R. Moore, attorney for defendant First of Omaha Service

Corporation, 1000 First National Bank Building, Minneapolis, Minnesota 55402.

Dated: December 22, 1976.

By the Court:
RICHARD J. KANTOROWICZ
Judge of District Court

MEMORANDUM

Plaintiff, a bank chartered under the National Banking Act in the State of Minnesota, brings this motion for a temporary restraining order forbidding defendants from soliciting BankAmericard customers and charging an interest rate greater than allowed by Minnesota Statute 48.185. Defendants are soliciting on behalf of the First National Bank of Omaha, Nebraska.

It appears that under Minnesota Law 48.185, Minnesota banks may extend loans to credit card customers at a rate not to exceed 12% (1% per month) per annum; but allows a $15.00 per year service charge to be assessed for each cardholder. Plaintiff charges only a $10.00 fee.

Defendants contend that they enjoy the privilege of a National Bank and that 12 U.S.C. §85 allows them to charge the interest rate of the state where they are located; that being 18% per annum, the rate allowed under Nebraska law.

This court finds no case cited by defendant which allows a national bank to charge an interest rate greater than the highest legal interest rate charged in the state where it operates. Defendants claim that the case of *Fisher v. First National Bank,* 538 F.2d 1284 (1976), supports their position. The decision there, in effect, follows the previous law which is to apply the most favored lending rate to national banks doing business in the state.

Although the parties argue pre-emption, none of the cases deal with this problem as a pre-emption problem. In fact, most of the cases talk in terms of most favored lending rate. Most favored lending rate is the rate given to any lender in the state, even though the maximum rate allowed a state bank is lower. In some limited cases, the national bank is able to charge a higher interest rate than a state bank.

No court has allowed a state with a high interest rate to export that high rate to another state. Such a result would be unconscionable. For a hundred years Congress has allowed states to set their own interest rates. The only prohibition has been that states could not discriminate against national banks, by limiting them to the interest charges of a state bank, if that state bank interest is less than individuals or other associations are allowed to charge. This is the so-called, most favored lender theory.

"The question whether there has been a pre-emption in a given field is always one of legislative intent." *State v. Barberian,* Rhode Island, (1965) 214 A.2d 465.

To take a statute that has been on the books for almost 100 years and find in that law an intention, in 1976, to nullify a financial practice of 200 years standing is ludicrous and makes a mockery of the doctrine of legislative intent. If there be any intent in Congress it must be to preserve the financial customs of so long a standing in our Republic.

Because this matter comes on as a motion for a Temporary Restraining Order, there may be further facts that may affect the court's decision. It is therefore necessary to take testimony. In view of the fact defendants are claiming a Minnesota law is unconstitutional as to them, the Attorney General should be notified and be given leave to intervene.

Upon Plaintiff's filing a bond of $10,000, the Temporary Restraining Order is granted.

R.J.K.

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

Civil File No. 726526

THE MARQUETTE NATIONAL BANK
OF MINNEAPOLIS,

Plaintiff,

vs.

FIRST OF OMAHA SERVICE CORPORATION
and CREDIT BUREAU OF ST. PAUL, INC.,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR PARTIAL SUMMARY JUDGMENT

The above-entitled matter was heard by the Court on January 7, 1977, on the Motion of plaintiff for Partial Summary Judgement for Temporary Injunction, and presented to the Court upon a Stipulation of Facts by the parties, Affidavit of Dale Harris, and all the files, records and proceedings herein. John Troyer and J. Patrick McDavitt of Levitt, Palmer, Bowen, Bearmon & Rotman appeared on behalf of plaintiff The Marquette National Bank of Minneapolis; Clay R. Moore of Mackall, Crounse & Moore appeared on behalf of defendant First of Omaha Service Corporation; and Rod McKenzie from the Office of the Attorney General appeared on behalf of Intervenor State of Minnesota.

Based upon the foregoing Motion, papers, files and arguments presented, the Court now enters the following Findings of Fact, Conclusions of Law and Order for Partial Summary Judgment:

FINDINGS OF FACT

I

The BankAmericard plan is a national and international bank credit card system which enables cardholders to purchase goods and services from participating merchants and obtain cash advances from participating banks throughout the United States and the world. The First National Bank of Omaha, which is not a defendant herein, is a national bank with its charter address in Omaha, Nebraska, is a card-issuing member in the BankAmericard plan, and as such has issued (prior to the entry of this Court's December 22, 1976 Temporary Restraining Order) and intends to issue (unless further enjoined) BankAmericard credit cards to Minnesota residents who qualify for them.

II

Defendant First of Omaha Service Corporation is a wholly-owned subsidiary of First National Bank of Omaha. Its principal place of business is in Omaha, Nebraska, but it is authorized to transact business in the State of Minnesota and intends, unless restrained or enjoined, to transact business in the State of Minnesota in the manner set forth and described in Paragraph III below.

III

Defendant First of Omaha Service Corporation intends to participate in the system by entering into agreements with Minnesota merchants and Minnesota banks which will govern

the participation of those merchants and banks in the system. While participating Minnesota banks will not have the authority to issue cards or extend credit directly in connection with BankAmericard transactions, they will advertise the Bank Americard plan and solicit applications for BankAmericards from Minnesota residents which are then forwarded to First National Bank of Omaha for acceptance or rejection, and they will serve as a depository for BankAmericard sales drafts deposited by participating merchants with whom defendant First of Omaha Service Corporation has member agreements.

IV

The First National Bank of Omaha has solicited and intends to solicit Minnesota residents on a continuous and systematic basis, in order to induce them to enroll in the First National Bank of Omaha's BankAmericard program. This solicitation program will be carried out by direct mail solicitation, telephone contact and through Minnesota banks.

V

Minnesota cardholders wishing to purchase goods and services or obtain cash advances with a BankAmericard issued by the First National Bank of Omaha, sign a BankAmericard form evidencing the transaction which is authenticated by the cardholder's BankAmericard credit card, and exchange the signed form for goods or services or cash from a participiating Minnesota merchant or bank, respectively. The sales draft forms are then deposited by the participating Minnesota merchant in his account with a participating Minnesota bank for credit, which will then forward them and cash advance drafts drawn on such bank to the First National Bank of Omaha for credit.

VI

The First National Bank of Omaha renders periodic statements to its Minnesota cardholders and charges finance charges on the unpaid balance of the cardholder's account. Such finance charges are assessed at the rate of 1 1/2 percent per month on the first $999.99 of the customer's account for an annual percentage rate of 18 percent, and 1 percent a month on amounts of $1,000 and more for an annual percentage rate of 12 percent. The finance charges assessed by the First National Bank of Omaha are computed on the daily outstanding balance of cash advances and on the entire previous balance of purchases of goods or services before deducting any payments made during the billing cycle. No finance charges are imposed on the purchase portion of the account balance when the previous month's total balance is paid in full on or before the due date shown on the monthly statement. Minnesota cardholders may pay all of their account balance in full or defer payment by paying an installment thereof. Payments of account balances are remitted by Minnesota residents directly to the First National Bank of Omaha.

VII

The defendant First of Omaha Service Corporation and participating Minnesota banks are or will be paid a fee for their services rendered to the First National Bank of Omaha. Defendant First of Omaha Service Corporation and the participating Minnesota banks do not directly receive interest. However, the First of Omaha Service Corporation does accept assignments of delinquent accounts from the First National Bank of Omaha, and as an incident to collecting these accounts, does collect interest.

VIII

The defendant First of Omaha Service Corporation intends, unless further restrained or enjoined, to immediately commence solicitation of potential participating Minnesota banks and Minnesota merchants so that they may perform the functions described in Paragraphs III and IV above in connection with the BankAmericard credit card program conducted by the First National Bank of Omaha. Interest rates would be assessed to Minnesota resident cardholders in the manner set forth in Paragraph VI above. Said interest rates are imposed by the First National Bank of Omaha in reliance on rates permitted in the State of Nebraska under Revised Statutes of Nebraska, 1943, and Cumulative Supplement, Sections 8-815—8-823, 8-825—8-829, as added by Laws 1969, Chapter 21 (L.B. No. 52), as amended, and other laws of Nebraska which the defendant First of Omaha Service Corporation contends are permitted to be charged to Minnesota residents by virtue of the provisions of the National Bank Act, Title 12 U.S.C. §85.

IX

Plaintiff The Marquette National Bank of Minneapolis ("Marquette") is asking for a temporary and permanent injunction restraining the defendant First of Omaha Service Corporation, and all persons acting as officers, employees or agents thereof, from engaging in any solicitation of residents of the State of Minnesota or other activity in connection with the offering or operation of a bank credit card program in the State of Minnesota in violation of Minnesota Statutes, §48.185.

X

Plaintiff Marquette is a national bank with its main banking office in Minneapolis, Minnesota, is a card-issuing member in the BankAmericard plan and as such has issued and continues to issue cards to Minnesota residents who qualify for them.

XI

Since the enactment on April 8, 1976, of Chapter 196, Laws of Minnesota 1976, codified as Minnesota Statutes, Section 48.185, the plaintiff Marquette has assessed charges in connection with its BankAmericard credit card program in reliance on such Statute as follows: a $10 annual charge for the privilege of using the card and, in addition, a finance charge equal to 1 percent per month (12 percent annual percentage rate). The finance charge of 1 percent per month assessed by plaintiff Marquette is computed on the average daily balance of the cardholder's account during each monthly billing cycle; except that where the account balance is attributable solely to purchases of goods and services charged to the account during one billing cycle, and the account is paid in full before the due date of the first statement issued after the end of that billing cycle, no finance charge is charged on that balance.

XII

The First National Bank of Omaha's BankAmericard program as conducted and operated in the manner described above, has resulted and will continue to result in competitive injury to The Marquette National Bank of Minneapolis and its BankAmericard program. The First National Bank of Omaha is able to offer the aforesaid BankAmericard program to Minnesota residents without a membership fee, and thereby induce customers away from Marquette, only because of the imposition and collection of finance charges of 1 1/2 percent per month from First National Bank of Omaha's BankAmericard holders in Minnesota.

CONCLUSIONS OF LAW

I

Nothing contained in the National Bank Act, 12 U.S.C. §85, precludes or preempts the application and enforcement of Min-

nesota Statutes, §48.185 to the First National Bank of Omaha's BankAmericard program as solicited and operated in the State of Minnesota.

II

The laws of the State of Minnesota, not the laws of the State of Nebraska, apply in determining the rate of interest permitted to be charged and collected by the First National Bank of Omaha from BankAmericard holders residing in the State of Minnesota.

III

The First National Bank of Omaha's BankAmericard program, as offered and operated in the State of Minnesota, is in violation of Minnesota Statutes, §48.185, in that it provides for the collection of a periodic rate of finance charge in excess of 1 percent per month.

IV

As agent of the First National Bank of Omaha in implementing said BankAmericard program and credit arrangement in the State of Minnesota, as the party that would enter into agreements with Minnesota merchants and Minnesota banks to participate in said BankAmericard program and credit arrangement, and by collecting interest from Minnesota residents under said BankAmericard program pursuant to assignments of delinquent accounts from the First National Bank of Omaha, defendant First of Omaha Service Corporation, in concert with the First National Bank of Omaha, has violated and threatens to continue to violate Minnesota Statutes, §48.185.

V

The Marquette National Bank of Minneapolis, as a bank extending credit in compliance with Minnesota Statutes, §48.185, which has and will be injured competitively by viola-

tions of this statute, is entitled to a permanent injunction prohibiting any continued violation of said statute.

ORDER FOR PARTIAL SUMMARY JUDGMENT

There being no genuine issue as to any material fact, the Court does hereby order that, pursuant to Rule 56 of the Minnesota Rules of Civil Procedure, judgment be entered in favor of The Marquette National Bank of Minneapolis and against defendant First of Omaha Service Corporation permanently enjoining defendant, First of Omaha Service Corporation, and all persons acting as officers, employees or agents thereof, from engaging in any solicitation of residents of the State of Minnesota or other activity in connection with the offering or operation of a bank credit card program in the State of Minnesota in violation of Minnesota Statutes, §48.185.

The Court expressly determines under Rule 54.02 of the Minnesota Rules of Civil Procedure that there is no just reason for delay for the entry of said judgment and that it be entered by the Clerk accordingly.

Dated: February 18th, 1977.

RICHARD J. KANTOROWICZ
Judge of District Court

MEMORANDUM

Plaintiff is a bank chartered under the National Banking Laws located in the State of Minnesota and brings this action for a permanent injunction restraining the defendants from soliciting BankAmericard customers in the State of Minnesota in violation of Minnesota Statutes 48.185. Defendant, First of Omaha Service Corporation, is the soliciting agent for the First National Bank of Omaha. Under the arrangement, the First of Omaha Service Corporation will merely solicit customers. The loans and credit will be extended by the First Na-

tional Bank of Omaha. Because the First National Bank of Omaha will not be soliciting customers in the State of Minnesota, they have not been joined as defendants at this stage of the proceedings.

Defendants are taking the position that First National Bank of Omaha, being chartered under the National Banking Act, enjoys all of the rights and privileges granted under that law and they may solicit business through its agents in Minnesota, offering interest rates which the First National Bank of Omaha could legally charge Minnesota residents.

The issue in this case is what is the legal rate of interest that the First National Bank of Omaha may charge Minnesota residents who subscribe to the BankAmericard plan offered by the First National Bank of Omaha.

The relevant provision of the National Banking Law is found in 12 U.S.C. §85.

> "Any association (national bank) may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of State, Territory, or District where the bank is located . . . and no more, except that where by the laws of any State a different rate is limited for Banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter."

Under that provision of 12 U.S.C. §85, the United States Court, in 1873 (*Tiffany v. National Bank of Missouri*, 85 U.S. (18 Wall.) 409), evolved what became known as "most favored lender" doctrine. This doctrine provides that a national bank doing business in a state where it is not located may charge the highest rate of interest for that type of loan allowed by

that state regardless of the type of lender. In other words, even though the state banks in that state were limited; a national bank could charge a higher rate if an individual person could charge a higher rate. The "most favored lender" doctrine was subsequently embodied in a regulation issued by the Comptroller of Currency in 12 C.F.R. §7.7310.

> "CHARGING INTEREST AT RATES PERMITTED COMPETING INSTITUTIONS; CHARGING INTEREST TO CORPORATE BORROWERS.
>
> (a) A national bank may charge interest at the maximum rate permitted by State law to any competing State-chartered or licensed lending institution. If State law permits a higher interest rate on a specified class of loans, a national bank making such loans at such higher rate is subject only to the provisions of State law relating to such class of loans that are material to the determination of the interest rate. For example, a national bank may lawfully charge the highest rate permitted to be charged by a State-licensed small loan company or morris plan bank, without being so licensed.
>
> (b) A national bank located in a State the law of which denies the defense of usury to a corporate borrower may charge a corporate borrower any rate of interest agreed upon by such borrower."

Minnesota, by Minnesota Statute 48.185, has set up credit card loans as a separate loan entity and provides that a credit card customer may be charged a $15.00 annual service charge but shall not be charged a rate of interest in excess of 12% per annum (1% per month). The plaintiff in this case issues BankAmericard credit cards pursuant to a franchise it has with the National BankAmericard Company. However, it charges only a $10.00 fee as a one year service charge.

Defendants claim that under 12 U.S.C. §85, they are permitted to charge Minnesota residents the interest rate allowed by Nebraksa Law, the state where First National Bank of Omaha is located. The Nebraska rate for credit card transactions would be 18% per annum or one and one half percent per month. Defendants propose to issue BankAmericards with no yearly service charge but will be charging a rate of interest higher than allowed by Minnesota Statutes regulating credit card loans.

This Court, on December 22, 1976, issued a Temporary Restraining Order, restraining defendants from soliciting or offering a bank credit card program in the State of Minnesota, in violation of Minnesota Statutes, Section 48.185. An application was made to the Minnesota Supreme Court by defendants and the Supreme Court denied them the relief they requested and ordered them to go back to the District Court for further proceedings. This matter was heard by the Court on January 7, 1977, on stipulated facts. It was further stipulated that this was to be a trial on the merits for a permanent injunction. Defendants rely on a number of arguments, some of which can be disposed of, without great discussion.

First of all, defendants argue that their interest rate is not higher than allowed under Minnesota Statutes because of the allowable $15.00 annual service charge. It is true that for customers who do not have very high credit card charges the $15.00 annual fee, when added as additional interest, makes it a higher rate. The interest rate at the low end of the scale would be higher. It is clear that defendants are not interested in small borrowers, however, and they are basically interested in the large users of credit cards and are more concerned with the large borrowers of money under the credit cards, and it

is in this area that they would be violating the Minnesota Statutes. The fact that they would be de facto in compliance at the lower end of the interest scale does not help them if they are in non-compliance at the high end of the interest scale. In fact, the Court's Order of December 22, 1976, has never prohibited defendants from soliciting credit card customers. It merely prohibited them from soliciting credit card customers in violation of Minnesota Statutes 48.185. So, if defendants are not soliciting customers, it's only because they intend to charge an interest rate greater than Minnesota law allows.

Defendants make great argument about the intelligence and education of consumers in our community and how, if they, in fact, charge a higher interest rate, they could not exist in a competitive market. This flies in the face of all known facts. It is common knowledge and well documented that consumers cannot make these judgments and there has been a plethora of consumer protection laws evidencing the fact that the government must protect the consumers from complicated business practices. Minnesota Statutes 48.185 is part of our consumer protection laws and the argument that consumers can protect themselves is an argument of long, long ago.

Since the founding of our republic, congress, by its legislation, has allowed states to set their own interest rates. By their position in this case, the defendants are arguing that they have a right to export Nebraska's high interest rate into the State of Minnesota. This Court, in its Order of December 22, 1976, said:

> "To take a statute that has been on the books for almost 100 years and find in that law an intention, in 1976, to nullify a financial practice of 200 years standing is ludicrous and makes a mockery of the doctrine of legislative intent. If there be any intent in Congress it must be

> to preserve the financial customs of so long a standing in our Republic."

A long standing acquiescence in an interpretation of a law by the community is recognized as a powerful principal of statutory construction. See Sutherland Statutory Construction. §49.06.

> "The meaning which persons affected by an act and the public at large ascribe to it may nevertheless have an important bearing on how it should be construed.
>
> > 'A practical construction given a statute by the public generally, as indicated by a uniform course of conduct over a considerable period of time, and acquiesced in and approved by a public official charged with the duty of enforcing the act, is entitled to great weight in the interpretation which should be given it, in case there is any ambiguity in its meaning serious enough to raise a reasonable doubt in any fair mind.' . . ."

Defendants are claiming by citing *Fisher v. First National Bank of Omaha,* Docket No. 75-1976 (8th Cir. January 28, 1977), and *Fisher v. First National Bank of Chicago,* 538 F.2d 1284 (7th Cir. 1976), that the two Circuit Courts of Appeals are, in fact, allowing National Banks to export their interest rates into low interest states. A reading of those two cases by this Court does not sustain that contention. It should be pointed out that in both of the Fisher Cases, the Courts were not dealing with a statute setting a credit card rate of interest but were applying small loan rate of interest of consumer loan rate of interest because there was no credit card rate of interest in any of the states involved. Therefore, the Court in neither of the Fisher Cases was faced with a specific "credit card interest" rate, but felt it had the choice of applying other interest rates that it deemed appropriate to those situations.

Because Minnesota has a credit card interest rate this creates a different situation because 12 C.F.R. 7.7310 identifies this as "such class of loans".

In both Fisher Cases and in all cases prior thereto, the courts have unanimously agreed that 12 U.S.C. 85 does not restrict national banks to state banking laws but no court has ever been faced with the proposition that we have here interpreting "such class of loans". Up until now the courts have had the freedom of defining credit card loans any way they wished, because no statute specifically provided for credit card loans. Now defendant argues that in the face of a credit card loan rate, it may still pick any rate it so desires. This, in fact, would negate all state usury laws. In effect, it would mean that national banks located in states with no usury laws could charge unlimited interest in any state of the United States. Such a position would seem to fly in the face of the Federal Regulation 12 C.F.R. 7.7310, which embodied the most favored lender rate where the national bank cannot be restricted to class of lenders, but by Federal Regulation are restricted to "class of loans".

It is agreed that 12 U.S.C. §85 was enacted to prevent states from discriminating against national banks. Therefore, states who create a different interest rates between classes of lenders would not be allowed to restrict national banks from enjoying the highest lending interest rates regardless of what class of lender was involved.

The need for such a division is obvious in that if states permitted high interest rates to certain persons in the state and denied them to national banks, national banks could not compete on equal footing and enjoy the parity that the courts have given them.

However, when the state makes laws limiting interest rates as to types of loans, it means that no one in that state can make that loan; therefore, the national bank is no better off or no worse off, than other people within the state.

This concept is embodied in C.F.R. 7.7310, which allows a state to forbid certain classes of loans. This is obviously fair because no one in the state can make such a loan and there is no discrimination against national banks. The national bank enjoys full parity with all other lenders in the state.

The same concept was approved in Fisher v. First National Bank of Omaha, 8th Circuit, January 28, 1977, when that case quotes with approval the language in *Union Missouri Bank of Kansas City v. Danforth,* 394 F.Supp. 774 (W.D. Mo. 1975):

> "Missouri has in effect made small loan companies licensed under that Chapter 'favored lenders' in the class of debt encompassed by the Retail Credit Sales Act. Plaintiffs, as national banks, are entitled to parity of interest charges with these lenders, notwithstanding the rates permitted to state chartered banks. To hold otherwise would be contrary to the congressional policy of assuring national banks parity with most favored state lenders and frustrate one of the primary objectives of the National Banking Act—competitive state-federal equality."

Heretofore, all of the decisions dealt with discrimination against classes of lenders. All of the cases cited by plaintiff forbid the same. However, the plain meaning of regulation 7.7310 indicates that states are allowed to discriminate as to classes of loans because everyone in the state is forbidden to make the loan and the principle of parity is not violated. Here, the State of Minnesota has set up a class of loan and designated it as a credit card rate. No one in the state is allowed

to issue credit at a more favorable rate; to allow First Bank of Omaha to charge a higher rate would violate the doctrine of parity.

The 8th Circuit Court in Fisher v. First Bank of Omaha interpreted Fisher v. First National Bank of Chicago to mean that the foreign national bank is limited with respect to the class of loans designation set by the state.

> "In the very recent case of Fisher v. First National Bank of Chicago, 538 F.2d 1284 (7th Cir. 1976), it was held that under the provisions of §85, if a national bank in one state makes a loan in another state in which it is doing business, and if there is a differential between the maximum rate allowable in one state and the maximum rate allowable in the other state with respect to *the same class of debt,* the bank may charge the higher of the two rates." (Italics supplied.)
>
> We find ourselves in agreement with that holding. And when it is applied to this case, it is clear that the bank is entitled to charge on these transactions the highest permissible Nebraska rate for *the same class of loan* regardless of whether the loan is made in Nebraska or Iowa since the maximum rate allowable in Iowa is no higher than the maximum rate allowable in Nebraska. If Iowa permitted a higher rate, which it does not, the bank would be entitled to charge the higher rate." (Italics supplied.)

In summary, states may not discriminate between classes of lenders but may discriminate between classes of loans and because Minnesota has set a separate and distinct credit card rate, there is no loss of parity by requiring the defendants to comply with that law.

JUDGE RICHARD J. KANTOROWICZ

12 U.S.C. § 85. Rate of interest on loans, discounts and purchases

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, or in the case of business or agricultural loans in the amount of $25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, or in the case of business or agricultural loans in the amount of $25,000 or more, at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, whichever may be the greater, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located out-

side of the States of the United States and the District of Columbia shall be at the rate allowed by the laws of the country, territory, dependency, province, dominion, insular possession, or other political subdivision where the branch is located. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

As amended Oct. 29, 1974, Pub. L. 93-501, Title II, § 201, 88 Stat. 1558.

Minn. Stat. 48.185 OPEN END LOAN ACCOUNT ARRANGEMENTS. Subdivision 1. Any bank organized under the laws of this state, any national banking association doing business in this state, and any savings bank organized and operated pursuant to chapter 50, may extend credit through an open end loan account arrangement with a debtor, pursuant to which the debtor may obtain loans from time to time by cash advances, purchase or satisfaction of the obligations of the debtor incurred pursuant to a credit card plan, or otherwise under a credit card or overdraft checking plan.

Subd. 2. No bank shall extend credit which would cause the total outstanding balance of the debtor on accounts created pursuant to the authority of this section to exceed $7,500. No savings bank shall extend credit which would cause the outstanding balance of the debtor to exceed $5,000, nor shall it extend such credit for any purposes other than personal, family, or household purposes, nor shall it extend such credit to any person other than a natural person.

Subd. 3. A bank or savings bank may collect a periodic rate of finance charge in connection with extensions of credit

pursuant to this section, which rate does not exceed one percent per month computed on an amount no greater than the average daily balance of the account during each monthly billing cycle. If the billing cycle is other than monthly, the maximum finance charge for that billing cycle shall be that percentage which bears the same relation to one percent as the number of days in the billing cycle bears to 30.

Subd. 4. No charges other than those provided for in subdivision 3 shall be made directly or indirectly for any credit extended under the authority of this section, except that there may be charged to the debtor:

(a) Annual charges, not to exceed $15 per annum, payable in advance, for the privilege of using a bank credit card which entitled the debtor to purchase goods or services from merchants, under an arrangement pursuant to which the debts resulting from the purchases are paid or satisfied by the bank or savings bank and charged to the debtor's open end loan account with the bank or savings bank;

(b) Charges for premiums on credit life and credit accident and health insurance if:

(1) The insurance is not required by the bank or savings bank and this fact is clearly disclosed in writing to the debtor; and

(2) The debtor is notified in writing of the cost of the insurance and affirmatively elects, in writing, to purchase the insurance.

Subd. 5. If the balance in a revolving loan account under a credit card plan is attributable solely to purchases of goods or services charged to the account during one billing cycle, and the account is paid in full before the due date of the first statement issued after the end of that billinig cycle, no finance charge shall be charged on that balance.

Subd. 6. This section shall apply to all open end credit transactions of a bank or savings bank in extending credit under an open end loan account or other open end credit arrangement to persons who are residents of this state, if the bank or savings bank induces such persons to enter into such arrangements by a continuous and systematic solicitation either personally or by an agent or by mail, and retail merchants and banks or savings banks within this state are contractually bound to honor credit cards issued by the bank or savings bank, and the goods, services and loans are delivered or furnished in this state and payment is made from this state. A term of a writing or credit card device executed or signed by a person to evidence an open end credit arrangement specifying:

(a) that the law of another state shall apply;

(b) that the person consents to the jurisdiction of another state; and

(c) which fixes venue;

is invalid with respect to open end credit transactions to which this section applies. An open end credit arrangement made in another state with a person who was a resident of that state when the open end credit arrangement was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

Subd. 7. Any bank or savings bank extending credit in compliance with the provisions of this section, which is injured competitively by violations of this section by another bank or savings bank, may institute a civil action in the district court of this state against that bank or savings bank for an injunction prohibiting any violation of this section. The court, upon proper proof that the defendant has engaged in any practice

in violation of this section, may enjoin the future commission of that practice. Proof of monetary damage or loss of profits shall not be required. Costs and attorneys' fees may be allowed to the plaintiff, unless the court directs otherwise. The relief provided in this subdivision is in addition to remedies otherwise available against the same conduct under the common law or statutes of this state.

Service of process shall be as in any other civil suit, except that if a defendant in the action is a foreign corporation or a national banking association with its principal place of business in another state, service of process may also be made by personal service outside the state, or in the manner provided by section 303.13, subdivision 1, clause (3), or in such manner as the court may direct. Process is valid if it satisfies the requirements of due process of law, whether or not defendant is doing business in Minnesota regularly or habitually.

[*1976 c 196 s 5*]